IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4479 of 2001
With
SCA NOS.1145, 1146, 1147, 1148 and 2538 of 2002

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LAXMINARAYAN RAMLAL KHATRI

Versus

GUJARAT SLUM CLEARANCE BOARD

Appearance:
MR SHALIN N MEHTA for Petitioner No. 1-5
MR DA BAMBHANIA for Respondent No. 1
MR KP RAWAL, AGP for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 10/09/2004

ORAL JUDGEMENT

1.0 In this group of petitions a common question is involved and therefore they are decided together by way of the present judgement.

2.0 In these petitions the petitioners have prayed for a direction declaring the decision of the respondent Board to reject the applications of the petitioners for withdrawal of voluntary retirement and to accept their applications for voluntary retirement as illegal and arbitrary.

3.0 The facts of the present case as emerging from the record can be summarized as under:

3.1 The petitioners were serving with the respondent Gujarat Slum Clearance Board. In the meeting of the Sub Committee of Council of Ministers held on 30.12.1999, a decision was taken by the State Government to offer voluntary retirement to the employees of the respondent no.1 Board. In pursuance of the said decision an Office Memorandum was issued by the Under Secretary, Urban Development and Urban Housing Department to the Secretary of the respondent No.1 Board on 12.12.2000 giving details about the scheme of voluntary retirement which was to be offered to the employees of the Board.

3.2 In pursuance of the aforesaid Office Memorandum, options for voluntary retirement were invited from the employees of the respondent Board. According to the petitioners, they were given to understand that if no option was exercised by them, they would be retrenched from service. Therefore, though each one of the petitioners had more than 10 to 20 years service left, they were constrained to apply for voluntary retirement on different dates.

3.3 After exercising the option for voluntary retirement, the petitioners realized that each one of them had more than a decide of service left with the Board which was incompensable in terms of money. On second thought the petitioners felt that the decision to opt for voluntary retirement was not in their interest. Therefore the petitioners applied for withdrawal of the option for voluntary retirement exercised by them by their communication of different dates. According to the petitioners, the respondent Board rejected their applications for withdrawal of the option of voluntary retirement and accepted their applications for voluntary retirement. In pursuance of the said acceptance order the petitioners have been relieved from the service of the respondent Board. All the petitioners have been paid their retirement dues which were also accepted by them. It is under these

circumstances the petitioners have moved this Court by way of the aforesaid writ petitions.

4.0 Mr. Shalin Mehta, learned Advocate for the petitioners submitted that the petitioners sought to withdraw their applications for voluntary retirement before the same could be accepted by the respondent Board and therefore the Board cannot act upon their application for voluntary retirement.

4.1 He submitted that till the voluntary retirement applications of the petitioners become final by acceptance by the Board, the petitioners have a right to withdraw their applications and to continue in service of the Board and the Board cannot impose voluntary retirement upon the petitioners if voluntary retirement applications have been withdrawn by the petitioners before their retirement became final.

4.2 Mr.Mehta further submitted that the present Voluntary Retirement Scheme does not provide for any withdrawal on the part of the employees of their applications. According to him no Voluntary Retirement Scheme can make the decision of the optees irreversible by forcing to retire voluntarily once an option for voluntary retirement is exercised by them.

5.0 Mr. Mr. Bambhania, learned Advocate for the respondents relied upon a decision of the Supreme Court in the case of Bank of India Vs. O.P.Swarnakar, reported in (2003)2 SCC 722 and contended that an employee could withdraw his option for the scheme before the same was accepted. The relevant paragraphs of the said decision read as under:

"111. in Shambhu Murai Sinh case it was held:
(SCC pp.442-43 para 18).

"18. Coming to the case in hand the letter of acceptance was a conditional one inasmuch as, though option of the appellant for the voluntary retirement under the Scheme was accepted but it was stated that the `release memo along with detailed particulars would follow'. Before the appellant was actually released from the service, he withdraw his option for voluntary retirement by sending two letters dated 7.8.1997 and 24.9.1997, but there was no response from the respondent. By office memorandum dated 25.9.1997 the appellant was released from the service and that too from the next day. It is not

disputed that the appellant was paid his salaries, etc. till his date of actual release i.e. 26.9.1997, and, therefore the jural relationship of employee and employer between the appellant and the respondents did not come to an end on the date of acceptance of the voluntary retirement and the said relationship continued till 26.9.1997. The appellant admittedly sent two letters withdrawing his voluntary retirement before his actual date of release from service. Therefore, in view of the settled position of the law and the terms of the letter of acceptance the appellant had locus poenitentiae to withdraw his proposal for voluntary retirement before the relationship of employer and employee came to an end.

112. It may be that therein there did not exist a clause to the effect that once an option to voluntary retirement is accepted, the employee cannot withdraw the same, but the law laid down therein would apply herein also.

5.1 Further in paras 114 and 115 and 130 the Supreme Court held as under:

"114. However, it is accepted that a group of employees accepted the ex gratia payment. Those who accepted the ex gratia payment or any other benefit under the Scheme, in our considered opinion, could not have resiled therefrom.

115. The Scheme is contractual in nature. The contractual right derived by the employees concerned, therefore, could be waived. The employees concerned having accepted a part of the benefit could not be permitted to approbate and reprobate nor can they be permitted to resile from their earlier stand.".

130. For the reasons aforementioned, we direct that:

1. The appeals preferred by the nationalised banks arising from the High Courts are dismissed except the cases where the employees concerned have accepted a part of the benefit under the Scheme. However, in respect of such

of the employees who despite acceptance of a part of the retirement benefit under the Scheme had continued under the orders of the High Court and has retired on attaining the age of superannuation, this order shall not apply."

5.2 Thereafter certain review applications were filed in the aforesaid group of petitions before the Supreme Court being the case of Punjab National Bank Vs. Virender Kumar Goel, reported in 2004 AIR SCW 4378. Para 10 of the said decision reads as under:

"10. In our view this contention would be of no assistance to the respondent. He knew very well that the money deposited in his account was part of the benefits under the Scheme. He also knew it very well his request for VRS was accepted after the Scheme had expired, yet he had withdrawn the amount deposited and utilised the same. The fact that the respondent had withdrawn a part of the benefit under the Scheme is not disputed and it could not be. To substantiate the contention,t he applicant has submitted a photocopy of respondent's Bank Account No.27980 (Annexure R-1). It clearly appears from Annexure R-1 that a part of the retirement benefit was deposited in the respondent's Bank Account on 12.1.2001 and on 15.1.2001 he had withdrawn Rs.three lakhs. Again on 28.2.2001 he had withdrawn Rs.fifty thousand.

11. This fact, however, was not brought to the notice of this Court at the time of the hearing. However, the fact remains that the incumbent had accepted the benefits under the Scheme and utilisation thereof would squarely be covered by direction No.1 as noticed above. Therefore, the judgement dated 17.12.2002 is reviewed to the extent that the appeal arising out of the judgement and order of the Uttaranchal High Court is dismissed and the judgement of the High Court is upheld."

In this decision also the Supreme Court reiterated the ratio that where the employees have accepted a part of the benefit under the Scheme cannot cannot take a plea that they had sought withdrawal of the voluntary retirement scheme.

5.3 Mr.Bambhania, learned Advocate for the respondents, submitted that as per the Scheme, once an option has been exercised it was not permissible to be varied and or withdrawn and it will be treated as final. He submitted that the Government of Gujarat pursuant to proposal dated 18.1.2001 sanctioned an amount of Rs.7.13 crores. An amount of Rs.1 crore was paid to the Board on 23.2.2001. The rest of the amount of Rs.6.13 crores was paid on 2.3.2001 for payment of 169 employees/officers for relieving under the V.R.Scheme before the end of Financial Year. The fund was required to be utilized on or before 31.3.2001. He submitted that there was no threat on the part of Board to take any action on the direction of retrenchment. The petitioners voluntarily subscribed to the scheme, accepted the terms, and consideration without any objections. He submitted that the present petitions have been filed after getting the fruit of the scheme which cannot be permitted in law. He further submitted that none of the petitioners have raised any protest when final process was initiated and the consideration have been paid to each of them and/or while accepting the consideration. He therefore submitted that the petitioners require to be rejected.

6.0 In view of the above submissions and in view of the decisions of the Supreme Court in the case of Bank of India Vs. O.P Swarnakar (supra), the question to be considered is whether the petitioners have accepted the payment or not. Learned counsel for the respondent submitted that all the petitioners have accepted the payment under the Scheme. He has produced a statement of payment made to the petitioners in pursuance of the Voluntary Retirement Scheme. Learned counsel for the petitioners is unable to contest this submission. Therefore once the payment is received by the petitioners they cannot be permitted to resile from their earlier stand.

7.0 For the foregoing reasons, I do not find any merits in these petitions. The petitions are therefore rejected. Rule is discharged with no order as to costs.

[K.S. JHAVERI, J.]
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